BEFORE
EDWIN H. BENN
ARBITRATOR

IN THE MATTER OF THE ARBITRATION

BETWEEN

VILLAGE OF BARTLETT

AND

METROPOLITAN ALLIANCE OF POLICE, CHAPTER #114

CASE NOS.: FMCS 220126-02885
Arb. Ref.: 22.059
(Interest Arbitration)

#780
S-MA-21-145

OPINION AND AWARD

APPEARANCES:

For the Village: Paul A. Denham, Esq.

For the Union: John A. Gaw, Esq.

Dated: March 16, 2023

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I. BACKGROUND

This is an interest arbitration proceeding between the Village of Bartlett ("Village") and the Metropolitan Alliance of Police, Chapter #114 ("Union") pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq*. ("IPLRA"), to establish the terms of the parties' collective bargaining agreement ("Agreement") replacing their May 1, 2018 through April 30, 2021 contract.[1] The employees covered by the Agreement are full-time sworn police officers below the rank of Sergeant.[2]

II. ISSUES IN DISPUTE

The following issues remain in dispute:[3]

(1). Arbitration of Discipline;
(2). Wages;
(3). Term/duration;
(4). Merit pay;
(5). Body-worn cameras;
(6). Complete Agreement;
(7). Uniform allowance;
(8). Protective vests; and
(9). Court standby time.

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[1] Village Exhibit 1; Union Exhibit 4. The parties have waived the requirement for a tri-partite panel found in Section 14 of the IPLRA. May 16, 2022 Scheduling Order at par. 2.

This award contains hyperlinks to various websites. If viewed on a computer or other device and selecting a hyperlink does not work, copy and paste the link into a browser. A search bar on the found page may need to be used by inserting the case number, name or other necessary information.

[2] Agreement at Section 1.1.

[3] Union Final Offers at 2; Village Final Offers at 1-2.

An issue concerning a savings clause provision was removed from this proceeding by agreement of the parties leaving that language at *status quo*. Tr. 4; Union Brief at 5; Village Brief at 5.

III. THE STANDARDS OF REVIEW

Section 14(h) of the IPLRA provides that an interest arbitrator/arbitration panel "base its findings, opinions and order upon the following factors, as applicable."[4]

Interest arbitration is a very conservative process. The ultimate purpose is for parties to know ahead of time that the process is very conservative which forces parties to negotiate their own terms and conditions for their contract and obtain results they might not get in interest arbitration rather than having an outsider like me determine the terms of their contractual relationship and then just walk away.

With respect to changes to an existing *status quo* condition, this conservative process frowns upon breakthroughs. Therefore, when only one party seeks to change a *status quo* condition, that party is required to demonstrate that the existing condition is broken. Thus, "good ideas" are not good enough to change the *status quo*. *City*

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[4] The relevant portions of Section 14 of the IPLRA provide:

> (h) Where there is no agreement between the parties ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
> (2) Stipulations of the parties.
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
> (A) In public employment in comparable communities.
> (B) In private employment in comparable communities.
> (5) The average consumer prices for goods and services, commonly known as the cost of living.
> (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of
> (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
> (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

of Streator and FOP, S-MA-17-142 (2018) at 18-19 ("In this conservative interest arbitration process, in order to change a *status quo* condition, there must be a showing by the party seeking the change that the existing *status quo* is broken" [citing *Village of Barrington and Illinois FOP Labor Council,* S-MA-167 (2015) at 5 and cases cited]).[5] *See also*, *City of Highland Park and Teamsters Local 700 (Sergeants Unit)* S-MA-09-273 (2013) at 5 [and award cited, emphasis in original]:[6]

> In simple terms, the interest arbitration process is *very* conservative; frowns upon breakthroughs; and imposes a burden on the party seeking a change to show that the existing system is broken and therefore in need of change (which means that "good ideas" alone to make something work better are not good enough to meet this burden to show that an existing term or condition is broken). The rationale for this approach is that the parties should negotiate their own terms and conditions and the process of interest arbitration — where an outsider imposes terms and conditions of employment on the parties – must be the *absolute* last resort.

However, where both parties seek to change an existing *status quo*, the analysis of the parties' offers is different and the burden is on each party to show that its offer is the more reasonable. *Village of Oak Lawn and Oak Lawn Firefighters Local 3405*, S-MA-13-033 (2014) at 66:[7]

> ... When both parties seek to change the *status quo*, the standards are far different from circumstances where one party seeks to make that change but the other party seeks to maintain the *status quo*. Where both parties seek to change the *status quo*, the arbitrator has to sort out which is the more reasonable position in

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[5] *Streator* is posted at:
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-17-142arbaward.pdf
Barrington is posted at:
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-13-167.pdf

[6] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-273.pdf

[7] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-13-033.pdf

> accord with the applicable statutory factors. Where one party seeks to change the *status quo*, the burden is on that party seeking to make the change to show that the existing system is broken and in need of repair. ...

See also, City of Rockford and City Fire Fighters Local 413, IAFF, S-MA-12-108 (Goldstein, 2013) at 60-63:[8]

> What jumps out to be is that as I see the parties' offers, each of the parties has proposed to change the language of Section 4.1, each pulling in the opposite direction of the other. ...
>
> * * *
>
> ... In any case, preserving the status quo is not a possibility here ....
>
> * * *
>
> ... In this case, neither party should bear a clear distinct burden to prove the change is necessary or the status quo is to be maintained. Rather, each party here shall be to bear the same burden to show me that its proposal is the more reasonable in the context of the Section 14(h) factors ....

With those standards (and other statutory and rules requirements discussed), I now turn to the specific issues in dispute in this case.

IV. RESOLUTION OF THE ISSUES IN DISPUTE

1. Arbitration Of Discipline

Article IV of the 2018-2021 Agreement provides:

> **ARTICLE IV**
> **Grievance Procedure**
>
> **Section 4.1. Definition.** A "grievance" is defined as a dispute or difference of opinion raised by an employee or the Chapter against the Village involving an alleged violation of an express provision of this Agreement except that any dispute or difference

[8] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-12-108.pdf

> of opinion concerning a matter or issue subject to the jurisdiction of the Police and Fire Commission shall not be considered a grievance under this Agreement.
>
> * * *
>
> **Section 4.3. Arbitration.** If the grievance is not settled in Step 3 and the Chapter wishes to appeal the grievance, the Chapter may refer the grievance to arbitration ...

Rather than the Police and Fire Commission having jurisdiction over disputes concerning disciplinary actions taken against bargaining unit employees, the Union now seeks to have the ability to arbitrate disputes over discipline.[9] The Village seeks to maintain the *status quo*.[10]

Section 8 of the IPLRA provides [emphasis added]:

> **Sec. 8. Grievance Procedure.** The collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise*. ....

Because of Section 8, for this arbitrator (and other arbitrators), this issue is long-settled requiring adoption of the Union's offer. *Village of River Forest and FOP*, S-MA-19-132 (2021).[11] As explained in *River Forest* (and in the cited awards), whether parties to collective bargaining agreements have had a long bargaining history of boards of fire and police commissioners deciding disciplinary matters and whether those boards functioned well (or did not function at all) are not relevant considerations. *Id*. at 8-12. Under the IPLRA, once a party seeks to include arbitration

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[9] Union Final Offers at 2; Union Brief at 4-5, 61-65.

[10] Village Final Offers at 1; Village Brief at 14, 93-95.

[11] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-19-132-arb-award.pdf

in a collective bargaining agreement, "[t]he parties have no longer 'mutually agreed otherwise ... [and] Section 8 of the IPLRA therefore requires an arbitration provision for discipline." *Id*. at 5. Under Section 8 of the IPLRA, that arbitration provision must be final and binding (the contractual arbitration provision "... shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement ...").

The language in Section 8 that collective bargaining agreements "... *shall contain* a grievance resolution procedure which *shall provid*e for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise" leaves nothing to discretion. As discussed in *River Forest*, *supra* at 6, I have applied the literal language in Section 8 in awards dating back to 1990:

> ... I have previously faced this issue (going back over 30 years) and I have required arbitration of discipline pursuant to the mandate in Section 8 of the IPLRA. *See* my awards in *City of Springfield and PBPA, Unit* 5, S-MA-89-74 (1990) at 1-5;[12] *City of Highland Park and Teamsters Local 714*, S-MA-219 (1999) at 9-12;[13] *Village of Lansing and FOP,* S-MA-04-240 (2007) at 16-21;[14] *Village of Maywood and Illinois Council of Police*, S-MA-16-119 (2017) at 2.[15]

And as further discussed in *River Forest*, *supra* at 6-7, "other arbitrators have reached similar results":

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[12] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-89-074.pdf

[13] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-98-219.pdf

[14] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-04-240.pdf

[15] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-16-119arbaward.pdf

> ... *See e.g., Will County Board and AFSCME*, S-MA-009 (Nathan, 1988) at 56, 64-65;[16] *City of Markham and Teamsters Local 726*, S-MA-89-39 (Larney, 1989);[17] *Calumet City and FOP,* S-MA-99-128 (Briggs, 2000) at 13-16 (2000);[18] *City of Elgin and PBPA*, S-MA-00-102 (Goldstein, 2001) at 66-72;[19] *City of Markham and Teamsters Local 726,* S-MA-01-232 (Meyers, 2003) at 14-15;[20] *Village of Shorewood and FOP*, S-MA-07-199 (Wolff, 2008);[21] *Village of Western Springs and MAP*, S-MA-09-99 (Meyers, 2010) at 63-66; [22] *Village of Montgomery and MAP*, S-MA-10-156 (Camden, 2011) at 26;[23] *Village of Maryville and FOP*, S-MA-10-228 (Hill, 2011) at 10-12;[24] *Village of Oakbrook and FOP*, S-MA-09-017 (McAlpin, 2011) at 13-19;[25] *Village of Bolingbrook and MAP*, FMCS No. 101222-01003-A (Newman, 2011) at 9-10.[26]

The Village asserts that the Union's proposal is "overbroad" and "[e]ffectively, the Union's proposal would allow the Union to challenge decisions of the Police and Fire Commission related to recruiting, hiring, promotions, and other subjects governed by the Illinois Fire and Police Commission Act."[27] I disagree. With the exception of the discussion *infra* at IV(4)(b) addressing arbitration of disputes with respect to evaluations under the merit pay provisions found in Section 11.5 of the Agreement,

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[16] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-88-009.pdf
[17] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-89-39.pdf
[18] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-99-128.pdf
[19] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-00-102.pdf
[20] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-01-232.pdf
[21] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-07-199.pdf
[22] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-019.pdf
[23] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-156.pdf
[24] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-228.pdf
[25] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-017.pdf
[26] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/101222-01003-a.pdf
[27] Village Brief at 95.

the arbitration provision to be added to the Agreement discussed here *only* concerns discipline. The Village's observation that "the Police and Fire Commission will be entirely out of the 'business' of disciplining officers" is correct.[28] However, this discussion has no effect on the Police and Fire Commission's functions for "recruiting, hiring, promotions, and other subjects governed by the Illinois Fire and Police Commission Act." Under the circumstances of this case, Section 8 of the IPLRA leaves me with no choice.

The Union's offer is adopted. This issue is remanded to the parties to negotiate language consistent with the addition of arbitration of discipline to the Agreement.

2. Wages

The parties' proposals are as follows:[29]

Year	Union	Village
Effective May 1, 2021	4%	3%
Effective May 1, 2022	4%	3%
Effective May 1, 2023	No offer[30]	Reopener

The parties are both changing a *status quo* (the wage rates from the 2018-2021 Agreement). Therefore, the burden is on each party to demonstrate that its offer is the more reasonable. *See* discussion *supra* at III.

Over the years as I have been analyzing wage offers in interest arbitration proceedings, I have discussed that looking at simple percentage increases (here, for the years in which percentage increases have been offered – 2021 and 2022 – the total

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[28] *Id*.

[29] Union Final Offers at 2; Union Brief at 5, 46; Village Final Offers at 1; Village Brief at 32.

[30] Although seeking a two-year term for the Agreement, the Union proposed that if a three-year term is adopted consistent with the Village's offer, the third year should be at 4%. Union Final Offers at 3. Because the Union's two-year term is being adopted (*see* discussion *infra* at IV(3), the Union's alternate proposal for a third year is moot.

8% and 6% offers made by the Union and the Village respectively) do not tell an accurate story. That is because, like savings accounts, wage increases compound and, in addition to that compounding effect, there will be employees who will make varying numbers of step movements during the life of a collective bargaining agreement (*e.g.*, the more junior employees who make multiple step movements) and others who will not (*e.g.*, because the employees are at the top of the salary schedule or are in a step for a longer period of time than the contract runs). As correctly observed by the Village,[31] the focus has to be on the "real money" yielded by the respective wage offers. *Village of Flossmoor and Illinois FOP Labor Council*, S-MA-17-193 (2019) at 34:[32]

> Examination of simple wage percentage offers ... is misleading and results in lower numbers for the wage increases than amounts actually received. That is because (1) wage increases compound (like a savings account, the second year's simple percentage increase is added to the first year's rate and the following years' simple percentages are applied to the preceding years' rates which results in compounding); and (2) employees who are not at the top step of the salary schedule can make step movements during the life of a collective bargaining agreement gaining the increased step wage rate along with the general wage increase for the year and similarly throughout the remainder of the contract.
>
> Compounding and step movements constitute the "real money" impact of wage percentage increases.

For determining the "real money", the analysis in this case becomes more complicated because employees are not paid based solely upon years of service to neatly place them at a wage step on a salary schedule, but they also are paid through minimum and maximum pay rates and merit increases to potentially place employees

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[31] Village Brief at 59.

[32] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-17-193arbaward.pdf

with equivalent years of service at different steps on the salary schedule – a schedule which has 35 steps.[33] The merit pay aspect of the dispute is discussed *infra* at IV(4).

Determining the "real money" received by the employees becomes even more complicated because there are periods of the Agreement under both parties' proposals that are yet to come, so we don't have hard Consumer Price Index ("CPI") information – the Section 14(h)(5) factor – other than forecasts for future periods (here, March and April 2023).

The analysis in this case for wages will be accomplished one step at a time looking at: (a) the compounding effect of the wage offers; (b) effect of changes in the CPI (actual and forecasted); and (c) employee movements on the salary schedule.

For determining which offer on wages is to be selected, the Section 14(h) factors are the guide. Because Section 14(h) provides that "the arbitration panel shall base its findings, opinions and order upon the following factors, *as applicable*", all of the factors in Section 14(h) do not have to be considered and, given the circumstances on the ground at the time of an interest award, some Section 14(h) factors will be given more weight than others and some factors will receive no weight at all. *Cook County Sheriff / County of Cook and AFSCME Council 31*, L-MA-13-005, etc. (2016) at 51 [emphasis in original and added]:[34]

> ... In the end, Section 14(h) of the IPLRA says nothing specific; dictates no weight to be given to any one factor over another; and with the language that an interest arbitrator/panel "base its findings, opinions and order upon the following factors, *as applicable*", even does not require that a specific factor be used. That just tells me that, over time, the parties and interest arbitrators have

[33] *See* Article XI and Appendix A of the 2018-2021 Agreement.

[34] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/l-ma-13-005arbaward.pdf

> to be flexible in addressing these disputes. *Different economic times require different approaches*.

In the present economic times there is an overbearing elephant in the room – inflation.[35]

Therefore, in my opinion, the Section 14(h) factor that must be given determinative weight in this case is the Section 14(h)(5) factor looking at "[t]he average consumer prices for goods and services, commonly known as the cost of living" – *i.e.*, the CPI. For this case, at this time, that factor is the driving "applicable" factor for selection of the wage offer for this Agreement.[36]

(a). Compounding Effect Of The Wage Offers

There are 35 steps on the salary schedule.[37] Because the compounding effect of the wage offers will be the same for each step, it is only necessary to examine one of those steps to see how the parties' offers compound. Step 15 will serve as the example.

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[35] Frick, "What Causes Inflation?" Harvard Business Review (December 23, 2022):

> In October 2022, the International Monetary Fund warned that inflation – combined with central banks; interest rate hikes designed to fight it – could threaten the entire global economy ....

https://hbr.org/2022/12/what-causes-inflation

[36] Given the inflation that has plagued this economy, the phrase "It's the economy, stupid!" used during the Bill Clinton election campaign is as relevant today as it was in 1992 when the phrase was coined.
https://politicaldictionary.com/words/its-the-economy-stupid/
https://www.bookbrowse.com/expressions/detail/index.cfm/expression_number/462/its-the-economy-stupid
https://www.washingtontimes.com/news/2022/may/19/its-the-economy-stupid/
https://www.nytimes.com/1992/10/30/opinion/on-my-mind-it-s-the-economy-stupid.html

[37] Appendix A of the 2018-2021 Agreement.

TABLE 1
Compounding Offers

		Union Offer				Village Offer			
Step	**Prior Contract**	**2021** (4%)	**2022** (4%)	**Diff.**	**Compounded Increase**	**2021** (3%)	**2022** (3%)	**Diff.**	**Compounded Increase**
15	83,401[38]	86,737[39]	90,206[40]	6,805[41]	8.16%[42]	85,903[43]	88,480[44]	5,079[45]	6.09%[46]

Therefore – and again noting that that there are 35 steps in the salary schedule, but just looking at a mid-range step and knowing that the percentage changes will be the same throughout the 35 steps – the Union's 8% offer for 2021 and 2022 compounds to 8.16% and the Village's 6% offer compounds to 6.09%.

(b). Changes In The Consumer Price Index

Looking to Section 14(h)(5) of the IPLRA, the next step is to compare the compounded wage increases to changes in the CPI. According to the Bureau of Labor Statistics ("BLS"), "[t]he Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services."[47]

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[38] Village Exhibit 1 at Appendix A (annual rate effective May 1, 2020 - April 30, 2021).

[39] 83,401 + 4% = 86,737.

[40] 86,737 + 4% = 90,206.

[41] 90,206 - 83,401 = 6,805.

[42] 6,805 / 83,401 = 0.08159 (8.16%).

[43] 83,401 + 3% = 85,903.

[44] 85,903 + 3% = 88,480.

[45] 88,480 - 83,401 = 5,079.

[46] 5,079 / 83,401 = 0.06089 (6.09%).

[47] https://www.bls.gov/cpi/

To make the comparisons of the wage offers in this case to changes in the CPI, a total CPI number is needed. What will the CPI look like from May 2021 through April 2023 – the years in which the parties have made numeric offers?[48]

As of this writing, actual CPI data exist for comparison purposes for a major portion of May 2021 through April 2023, but not for the entire period. There are two months (March and April 2023) for which no data exist from the BLS as those months are yet to come.

The BLS offers a variety of CPI measures. For this case and given the location of the Village (approximately 35 miles from Chicago, 21 miles from Naperville, Illinois and six miles from Elgin, Illinois), the BLS CPI changes for all Urban Consumers (CPI-U) for Chicago-Naperville-Elgin are relevant.

From May 2021 through February 2023 (the months for which CPI data exist reported for Chicago in the BLS data base), those changes are as follows:[49]

TABLE 2
BLS CPI-U Chicago-Naperville-Elgin

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2021					253.934	254.974	255.929	256.078	256.881	258.621	259.254	260.368
2022	262.730	264.828	268.417	269.569	274.301	277.780	277.311	277.454	278.030	278.415	276.861	274.577
2023	276.982	277.978										

Based on the hard data that exist, from May 2021 through February 2023, the CPI increased 9.47%.[50]

To fill out how the CPI for the period May 2021 through April 2023 will look, I can turn to the economic forecasts.

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[48] The parties' merit increase proposals are discussed *infra* at IV(4).

[49] https://data.bls.gov/cgi-bin/surveymost?cu (select "Chicago all items" and "Retrieve data")

[50] 277.978 - 253.934 = 24.044. 24.044 / 253.934 = 0.09468 (9.47%).

With respect to the economic forecasts, I have used the Federal Reserve Bank of Philadelphia's Survey of Professional Forecasters as it "... is the oldest quarterly survey of macroeconomic forecasts in the United States."[51]

The First Quarter 2023 Survey of Professional Forecasters issued February 10, 2023 forecasted a 3.3% annual increase based on First Quarter 2023 projections.[52] That appears to be a rather optimistic forecast that inflation will cool in the coming months for several reasons – a skepticism shared by the Village ("[a]dmittedly, based on the economic uncertainties over the past few years, such an immediate halt to inflation might be overly optimistic" and that there has been a "level of record inflation.").[53]

First, the Fourth Quarter 2022 Survey of Professional Forecasters which issued November 14, 2022 (three months earlier than the First Quarter 2023 issuance) predicted a 5.4% increase in the CPI for the Fourth Quarter of 2022 (increasing from

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[51] According to the Federal Reserve Bank of Philadelphia:

> The Survey of Professional Forecasters is the oldest quarterly survey of macroeconomic forecasts in the United States. The survey began in 1968 and was conducted by the American Statistical Association and the National Bureau of Economic Research. The Federal Reserve Bank of Philadelphia took over the survey in 1990.
>
> The Survey of Professional Forecasters' web page offers the actual releases, documentation, mean and median forecasts of all the respondents as well as the individual responses from each economist. The individual responses are kept confidential by using identification numbers.

https://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/

The parties also refer to the Survey of Professional Forecasters. Village Brief at 58; Union Brief at 26, 51.

[52] https://www.philadelphiafed.org/surveys-and-data/real-time-data-research/spf-q1-2023

"Headline CPI" as opposed to "Core CPI" data are used for this analysis. *Cook County Sheriff/County of Cook and AFSCME Council 3*1, L-MA-09-003, etc. (2010) at 25:

> ... With respect to the CPI, the Survey [of Professional Forecasters] distinguishes between "Headline CPI" and "Core CPI" – the difference being that "Headline CPI" includes forecasts concerning prices in more volatile areas such as energy and food, while "Core CPI" does not. Because employees have to pay for energy and food, it appears that Headline CPI is more relevant for this discussion. ...

https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/l-ma-09-003etal.pdf

[53] Village Brief at 58, 60.

its previous forecast of 4.3%) and a 7.7% increase in the CPI for all of 2022.[54] Thus, according to the latest CPI forecast from the Survey of Professional Forecasters, inflation is getting somewhat under control and moving back to the Federal Reserve's desired 2% inflation rate.[55]

Second, however, a mere 14 days after the February 10, 2023 forecast from the Survey of Professional Forecasters issued, the Government's Bureau of Economic Analysis issued its Personal Consumption Expenditures Price Index ("PCE").[56] The difference between the CPI and PCE is that the CPI uses data from consumers while the PCE uses data from businesses.[57]

The most-recent PCE data showed a different look about what is ahead, reporting an upward change from 5.3% in December 2022 to 5.4% in January 2023 when months prior to December showed a distinct downward trend (October 2022 was at 6.1% and November 2022 was at 5.6%).[58]

The analysts reacted accordingly. As reported in the New York Times (February 25, 2023):[59]

> ***The Fed's Preferred Inflation Gauge Sped Back Up***
>
> There was a moment, late last year, when everything seemed to be going according to the Federal Reserve's plan: Inflation was

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[54] https://www.philadelphiafed.org/-/media/frbp/assets/surveys-and-data/survey-of-professional-forecasters/2022/spfq422.pdf

[55] According to the Board of Governors of the Federal Reserve System:

> Why does the Federal Reserve aim for inflation of 2 percent over the longer run?
>
> The Federal Open Market Committee (FOMC) judges that inflation of 2 percent over the longer run, as measured by the annual change in the price index for personal consumption expenditures, is most consistent with the Federal Reserve's mandate for maximum employment and price stability. ...

https://www.federalreserve.gov/faqs/economy_14400.htm

[56] https://www.bea.gov/data/personal-consumption-expenditures-price-index

[57] https://www.bls.gov/osmr/research-papers/2017/st170010.htm

[58] https://www.bea.gov/data/personal-consumption-expenditures-price-index

[59] https://www.nytimes.com/2023/02/24/business/economy/inflation-spending-fed.html

> slowing, consumers were pulling back and the overheated economy was gently cooling down.
>
> But a spate of fresh data, including worrying figures released Friday, make it clear that the road ahead is likely to be bumpier and more treacherous than expected.
>
> The Personal Consumption Expenditures price index — the Fed's preferred measure of inflation – climbed 5.4 percent in January from a year earlier, the Commerce Department said Friday. That was an unexpected re-acceleration from December's 5.3% pace after six months of relatively consistent cooling.

The inflation roller coaster predictions ride continued with the announcement of the CPI data for February 2023 which became complicated as several banks began to fail. As reported in The Washington Post (March 14, 2023):[60]

> ... [T]he road ahead remains shaky. ... The central bank is now weighing stubborn inflation readings – including new data released Tuesday [the BLS CPI data released March 14, 2023 for February 2023] ....
>
> Although inflation has eased from June highs of 9.1 percent, it remains too high for comfort. ...
>
> "Big picture, progress on taming inflation has been slower than we had imagined," said Pooja Sriram, an economist at Barclays. ...

Therefore, the Survey of Professional Forecasters' present prediction of only a 3.3% CPI increase for 2023 may be overly optimistic and the real numbers will be higher as the year unfolds – as reflected by the recent CPE increase and the analysis that "... the road ahead is likely to be bumpier and more treacherous than expected ... an unexpected re-acceleration ..." there are "stubborn inflation readings ... too high for comfort ... [and] 'progress on taming inflation has been slower than we imagined.'"

[60] https://www.washingtonpost.com/business/2023/03/14/cpi-inflation-february-fed/

Nevertheless, although the forecasts for lesser increases in the CPI for 2023 may in reality be low (making the Village's wage offer leaving employees with less buying power than its offer already does), I can only work with what I have as this award is written and the statutory factor of consideration of the CPI.

I have actual CPI data through February 2023. *See* Table 2, *supra* at IV(2)(b). I have to fill out March and April 2023 through use of the forecasts for changes in the CPI. Given that the forecast for 2023 is 3.3% based on First Quarter (Q1) numbers, it would be fair to conclude that the two-month portion for March through April is an increase of 0.56%.[61]

The comparative numbers for impact of the wage offers compared to increases in the CPI therefore show the following:

[61] The quarterly CPI forecasts (Headline CPI) found in the most recent Survey of Professional Forecasters for are:

Period	Forecast
2023:Q1	3.3%
2023:Q2	3.4%
2023:Q3	3.1%
2023:Q4	2.8%
2023: Annual	3.5%

https://www.philadelphiafed.org/surveys-and-data/real-time-data-research/spf-q1-2023

With the exception of the 2.8% forecasted for Q4, there are no significant variances in the Survey of Professional Forecasters' numbers for 2023. However, to be as precise a possible, using the 3.3% number for Q1 and then dividing that number by 12 (for the 12 months comparison of Q3 2023 to Q3 2022), it is therefore reasonable to conclude that for the remaining month in Q1 2023 (March), the monthly forecast for March 2023 is 0.275%. Doing the same calculation for Q2 2023 (which includes April 2023) compared to Q2 2022 (3.4% / 12) yields 0.283%. Therefore, for March and April 2023, the forecasted increase will be 0.56% (0.275% + 0.283% = 0.558%, rounding to 0.56%).

TABLE 3
May 2021-April 2023 Offers Compared To CPI Changes

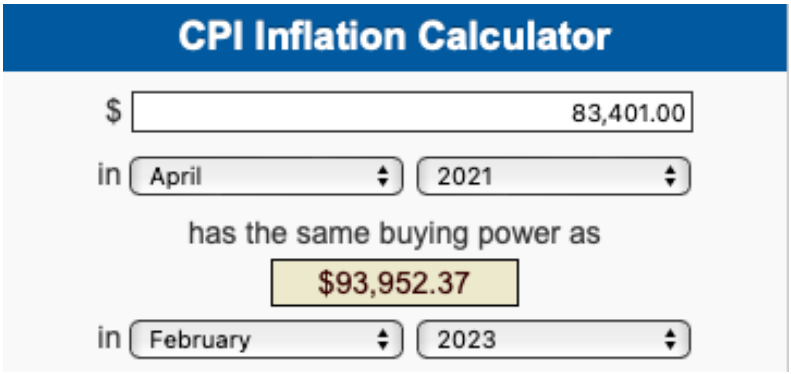
	CPI In-crease	Village Offer (Com-pounded) Years 1 and 2	Diff. from CPI	Union Offer (Com-pounded) Years 1 and 2	Diff. from CPI
May 2021 - February 2023 CPI Increase (Actual)	9.47%				
March 2023 - April 2023 CPI Increase (Forecasted)	0.56%				
CPI Percentage In-crease May 2021 - April 2023 (Actual and Forecasted)	**10.03%**	6.09%	**-3.94%**	8.16%	**-1.87%**

Therefore, the Village's 6% offer for the two-year period May 2021 through April 2023 of an Agreement effectively reduces each salary step by 3.94% compared to the CPI, while the Union's 8% offer also reduces each salary step below the CPI for that period, but at a lesser reduction of 1.87%. Stated differently, when compared to the Union's offer, the Village's offer reduces each salary step compared to the CPI by over a factor of 2 and places the employees further underwater than does the Union's offer.

But tables and detailed analysis aside, there is one BLS tool that really tells the story on the impact of inflation reflected through the CPI – the "CPI Inflation Calculator".[62] In the last month of the predecessor Agreement (April 2021) the example used *supra* at IV(2)(a) of an officer at Step 15 with an annual salary of $83,401

[62] https://www.bls.gov/data/inflation_calculator.htm
"The CPI inflation calculator uses the Consumer Price Index for All Urban Consumers (CPI-U) U.S. city average series for all items, not seasonally adjusted" and not the similar data for Chicago-Naperville-Elgin. *Id*. Although the data sets are different (one more local the other national), the Inflation Calculator still gives a valid look at how inflation is affecting buying power in different years.

will make the point.[63] As of this writing, the BLS Inflation Calculator shows that in order for that employee to tread water and have the same buying power in February 2023 that the employee had in April 2021 when the prior contract expired, that employee will need to make $93,952.37.



As shown by Tables 1 and 3, *supra*, the Union's wage offer which brings that employee to $90,206 (and will ripple through all 35 steps in corresponding fashion) will keep that employee closer to treading water with respect to buying power than will the Village's offer which brings that employee to $88,480.

This part of the analysis concerning the CPI favors the Union's offer.

(c). Impact Of Step Movements

For ascertaining the "real money" increases flowing from the parties' offers, the final consideration is how employees move through steps during the term of a collective bargaining agreement. As noted earlier, the step increases based on merit evaluations complicates the analysis. This is not a simple placement of officers on a salary schedule based on years of service and then doing a calculation of how the officers move (or don't move) through steps in the schedule as their years of service increase.

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[63] Appendix A of the 2018-2021 Agreement.

However, the Village asserts that "... because the Department now has two years of merit evaluations in the books, aside from the Village's proposal for a reopener in 2023-24, the Village can calculate, *to the dollar*, what each bargaining unit member will make under both Union and Village wage proposals" [emphasis added].[64]

To complete the wage offer analysis, I need only look at the Village's calculations for its offer.[65]

According to the Village, under its offer for 2021-2022 (with bonuses), 19 of 32 officers who are at the top (a substantial portion of the bargaining unit) will get increases between 3.74% and 4.23% and, for 2022-2023, 20 officers at the top (again, a substantial of the bargaining unit) will get increases between 3.72% and 4.19% which includes bonuses.[66] Then, as the Village points to the Union's offer, 24 officers who are the top will make 4% in both 2021-2022 and 4% in 2022-2023.[67]

As it must, the Village candidly concedes that "[a]dmittedly, the Village's proposal does not meet the level of record inflation for 19 officers at the Top Step of the Merit wage scale." As shown in Table 3, *supra* at IV(2)(b), with only two months of forecasted increases for March through April 2023, that increase in the CPI for May 2021 to April 2023 is 10.03% (9.47% actual increase if those two months are excluded). For a majority of the number of employees examined by the Village, the increases calculated by the Village flowing from its 6% offer will end up with a range between 7.46% on the low end (3.74% + 3.72%) to 8.42% on the high end (4.23% + 4.19%). Both of those ranges are below the 10.03% increase in the CPI for May 2021 through April 2023 and are even below the 9.47% CPI just based on existing data from May 2021

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[64] Village Brief at 59.

[65] *Id*. at 59-61.

[66] *Id*.

[67] *Id*.

through February 2023. Under the Union's offer of 8% as analyzed by the Village and assuming no officers even move to higher steps (which is not the case) most of the employees at the top step would get an 8.16% compounded increase. The low end 7.46% increase resulting from the Village's offer places its offer further below the CPI increases than does the Union's offer.

The focus here has to be on what the step movements will mean to most of the bargaining unit. Here, the number of employees referenced by the Village end up deeper under water based the Village's proposal than they would from the Union's proposal.

Given that employees will move through steps at different rates with different resulting percentage wage increases, unless all employees are at the same step or rate, there will always be employees who will exceed the CPI increases in different amounts (sometimes, wildly so). For example, *see Village of Barrington, supra* at 8-11, 14, 16-17, where a 6.25% wage offer for a three-year contract made by the employer (which offer was adopted) turned into real money percentage increases of 6.38%, 14.33%, 22.82% and 30.31% to the employees after compounding and step movements were computed.[68]

However, Section 14(g) of the IPLRA requires that for economic issues, I can only choose one of the two final offers ("As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)"). Therefore, how the wage offers affect so many in the bargaining unit is key. And that key in this case based on the number of officers examined by the Village supports the

[68] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-13-167.pdf

Union's offer which places the bargaining unit closer to the increases in the CPI than does the Village's offer.

(d). Conclusion On The Wage Offers

Based on the above, at this economic time that is plagued by inflation, the Union's wage offer which places the employees closer to the increases in the CPI is adopted.

3. Term/Duration

The Union argues that the Agreement should be for two years expiring April 30, 2023 with the Village seeking a term of three years (with a reopener in the third year) expiring April 30, 2024 with the assertion that a "breather" would be appropriate in this case.[69]

The parties are both changing a *status quo* (the duration of the Agreement). Therefore, the burden is on each party to demonstrate that its offer is the most reasonable. *See* discussion *supra* at III.

While I have recognized the need for "breathers" after difficult negotiations, in unstable economic times contracts of shorter duration are a good option as are reopeners. *City of Highland Park (Sergeants Unit), supra* at 14 [footnotes and awards omitted] discussing collective bargaining difficulties resulting from the economic trauma of the "Great Recession" of 2008:[70]

> I have previously recognized a need to give parties a "breather" after difficult and lengthy contract negotiations and therefore have imposed longer contracts. However, I have also recognized that in unstable economic times, shorter contracts or reopeners in the out-years of an agreement are preferable so the parties can

[69] Union Final Offers at 2; Union Brief at 2, 44-45; Village Final Offers at 1; Village Brief at 2, 11, 14 (at footnote 6), 25-32.

[70] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-273.pdf

> adapt to future and unknown ebbs and flows caused by the Great Recession and a struggling and still unknown recovery to more realistically address current existing economic conditions.

To say the least, the inflation-ridden economy we have been through which has not yet subsided would support a two-year rather than a three-year term so as to allow the parties sooner rather than later to better address conditions on the ground through the bargaining process. But a reopener is also an option.

However, the reality is that the Village's argument for a three-year term with a wage reopener is moot. The two-year proposal made by the Union will expire April 30, 2023 – less than two months from now. For all purposes, with the Union's two-year proposal, the Village is getting the reopener it seeks.

The Union's proposal for a two-year term is therefore adopted.

4. Merit Pay

The Village seeks to maintain the current system of merit pay.[71] The Union seeks to eliminate merit pay replacing that system with a six-step wage scale based on years of service.[72]

By seeking a straight step wage scale based on years of service to replace the existing merit pay system, only one party – the Union – is seeking to change the *status quo*. The burden is therefore on the Union to demonstrate the existing merit pay system is broken. *See* discussion *supra* at III.

There are two questions raised by the merit pay dispute.

The first question is whether the merit increase system shall remain or be replaced by the Union's six-step salary schedule based on years of service? The second

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[71] Village Final Offers at 1; Village Brief at 33.

[72] Union Final Offers at 2; Union Brief at 30-49. *See* Union Brief at 47-48 where the Union's six-step schedule based on years of service compared to the existing 35-step merit schedule is detailed.

question is if the merit increase system remains, can grievances over evaluations where employees receive an "exemplary" rating rather the resulting higher paid "superior" rating be arbitrated?

Those two questions shall be separately addressed.[73]

(a) Queston 1: Should The Merit Increase System Be Replaced By A Years Of Service Salary Schedule?

The *status quo* is the current merit pay system found in Section 11.2 of the 2018-2021 Agreement.

Section 11.2 of the 2018-2021 Agreement provides:

> **Section 11.2. Salary Increases and Performance Evaluation and Merit Increase System.** The Salary Administration and Merit Increase System currently in effect, providing for annual merit reviews, shall continue in full force and effect.
>
> It is understood and agreed that annual merit adjustment to base pay for May 1, 2018, May 1, 2019 and May 1, 2020 are subject to the following:

	Increase
Competent	4 Steps
Exemplary	5 Steps
Superior	6 Steps

> If an officer has been at the top of the pay system for a year or more as of May 1 and receives a rating of "superior" in his annual performance evaluation, then such officer shall receive a one-time, lump sum bonus in the gross amount of $1,000.00, ($1250 effective 5/1/19) which said amount shall not be added to base pay. If an officer has been at the top of the pay system for a year or more as of May 1 and receives a rating of "exemplary" in his annual performance evaluation, then such officer shall receive a one-time, lump sum bonus in the gross amount of $500.00 ($750

[73] The Village's argument that the arbitration question should not be considered by me is addressed *infra* at IV(4)(b)(1).

> effective 5/1/19), which said amount shall not be added to base pay.
>
> * * *

The Village asserts that "the first contractual iteration of merit pay was a by-product of interest arbitration; the Village and this bargaining unit have mutually agreed to link the salary schedule to merit evaluations for ... decades" and "... at no point did the Union ever suggest modifications to this merit pay system that has been a mutually-agreed byproduct of the parties' bargaining process for over two decades."[74]

To change the merit pay *status quo*, the Union has the burden to show that the existing merit pay system is broken. The Union has not met that burden.

The Union raises a variety of arguments to support its position, specifically:

- The merit pay system compares numbers of citations issued by officers for evaluations which is illegal under *Policemen's Benevolent Labor Committee v. City of Sparta*, 181 N.E.3d 848, 2020 IL 125508, 450 Ill.Dec. 496 (2020) as that case interpreted Section 11-1-12 of the Illinois Municipal Code (65 ILCS 5/11-1-12) which prohibits quotas in evaluation systems [the "Quota Act"]. According to the Union, the "... merit pay evaluation system is illegal ... [i]t compares the number of citations issued by one police officer to that of another" and, "for the purpose of performance evaluation ... [and] it includes citations within the count for 'points of contact'";[75]
- The merit system cannot be changed to make it lawful;[76]
- The merit system is not subject to a breakthrough analysis;[77] and

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[74] Village Brief at 10, 48.

[75] Union Brief at 26-39.

[76] *Id*. at 41-42.

[77] *Id*. at 42-43.

- Merit pay is an antiquated system.[78]

For the following reasons, those arguments are not persuasive for the Union to meet its burden.

(1). Alleged Illegality Under The Quota Act And *City Of Sparta*

For over two decades, merit pay has been a condition in the parties' collective bargaining agreements covering these employees. Merit pay is found in the Village's 11 prior collective bargaining agreements covering these employees with the Laborers (1989-1991, 1991-1993, 1993-1996, 1996-1999) and this Union (2000-2003, 2003-2006, 2006-2009, 2009-2012, 2012-2015, 2015-2018, 2018-2021).[79] That is a long-existing *status quo*.

Relying upon the Quota Act and *City of Sparta*, *supra*, the Union now asserts that the "... the Bartlett merit pay evaluation system is illegal."[80] The Union is asking me as an arbitrator to declare that the merit pay system which has existed in the parties' collective bargaining agreements for over two decades is "... exactly what the Supreme Court held [in *City of Sparta*] to be unlawful" and that I should strike it down and adopt the Union's position.[81]

The Union's argument is not persuasive.

As a general proposition, arbitrators do not have authority to interpret statutes. That function is for the courts and administrative agencies of competent jurisdiction because arbitrators are confined to interpreting terms of collective bargaining agreements. *Alexander v. Gardner-Denver, Co.*, 415 U.S. 36, 53, 57 (1974) [quoting

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[78] *Id*. at 42-43.

[79] Village Exhibits 25(j), 25(i), 25(h), 25(g), 25(f), 25(e), 25(d), 25(c), 25(b), 25(a), 1.

[80] *Id*. at 35.

[81] *Id*. at 37.

United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960)]:

> [A]n arbitrator is confined to interpretation and application of the collective bargaining agreement ...
>
> * * *
>
> ... [T]he specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land .... [T]he resolution of statutory or constitutional issues is a primary responsibility of courts ....

The cases surrounding arbitrators' lack of authority to interpret "external law" as opposed to being limited to interpreting provisions of collective bargaining agreements have arisen in the context of *grievance arbitrations* where an arbitrator issued an award which exceeded the arbitrator's authority for only interpreting the terms of a collective bargaining agreement and a court on review determined that the arbitrator's award or remedy failed to "draw its essence from the collective bargaining agreement". *Enterprise Wheel & Car Corp*., *supra*, 363 U.S. at 597, *See also*, *American Federation of State County and Municipal Employees v. Department of Central Management Services, et al* v. *Department of Central Management Services, et al,* 671 N.E.2d 668, 672 (1996) ("... a court is duty bound to enforce a labor-arbitration award if the arbitrator acts within the scope of his or her authority and the award draws its essence from the parties' collective-bargaining agreement.").

But this case is different. This is not a *grievance* arbitration *interpreting* the terms of a collective bargaining agreement. This is an *interest* arbitration *formulating* the terms of a collective bargaining agreement. And, in interest arbitrations, interest arbitrators have been given the statutory authority under Section 14(h)(1) of the IPLRA to consider "[t]he lawful authority of the employer."

The Section 14(h)(1) factor does not cause me to find the merit pay provisions of the Agreement "illegal" or "unlawful" as argued by the Union (and therefore broken) and that I should adopt the Union's position to eliminate merit pay from the Agreement.

First, with respect to Section 14(h)(1), at the end of 2021 and the beginning of 2022, I was faced with two cases in interest arbitration where the State of Illinois sought to add to its contractual relationship with AFSCME the ability to mandate COVID vaccinations for employees working in congregate correctional facilities in the Illinois Department of Corrections (the State prisons) as well as in congregate settings in the Illinois Department of Juvenile Justice (which AFSCME opposed for those employees) and then, AFSCME's position that the vaccine mandates ultimately found appropriate by me for the correctional facilities should also apply with respect to visitors, vendors and other non-employees coming into those facilities (which the State did not agree to).

In those cases, the Section 14(h)(1) factor looking at the State's legal authority with respect to vaccine mandates came into play. *State of Illinois and AFSCME Council 31 (Vaccine Mandate Interest Arbitration), S-MA-22-121* (December 29, 2021) (Interim Award covering mandates as a requirement for the employees) and the January 19, 2022 Final Award (after remand extending the vaccine mandate to visitors, vendors and other non-employees).[82]

In the Vaccine Mandate awards, along with other applicable Section 14(h) factors, I applied Section 14(h)(1) and found that based on external law, the State had

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[82] The December 29, 2021 Interim Award (hereafter "*Interim Award*") covering the employees is posted at:
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-22-121.pdf
The January 19, 2022 Final Award after remand (hereafter "*Final Award*") covering visitors, vendors and other non-employees is posted at:
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-22-121-final-after-remand.pdf

the legal authority to mandate COVID vaccinations. That finding was made because of the long line of cases dating back to 1905 and then up to those cases deciding COVID vaccine mandate disputes at the time the cases were being presented to me which held that a state or other public entity in the exercise of its police powers or similarly authority could mandate vaccinations. *Interim Award* at 19-25; *Final Award* at 33-38 and cases cited. Moreover, my considering and giving strong weight to those firmly and long-established legal precedents was appropriate under the circumstances because the Vaccine Mandate awards had "life and death consequences" requiring that "time is of the essence" (*Interim Award* at 5, 7, 50; *Final Award* at 5-6, 13, 19, 22-23) as COVID was spreading and infecting tens of millions and killing hundreds of thousands of people in the U.S. with corresponding numbers in Illinois. *Interim Award* at 10 (as of December 29, 2021, over 52.8 million cases with 816,000 deaths in the U.S. and 2.1 million cases with 31,000 deaths in Illinois); *Final Award* at 8-10 (as of January 19, 2022 – 21 days after the *Interim Award* – increasing to over 66.7 million cases with over 850,000 deaths in the U.S. and approximately 2.7 million cases with almost 33,000 deaths in Illinois).

The dire emergency conditions that had life and death consequences that I was faced with in the Vaccine Mandate awards which caused me to rely upon Section 14(h)(1)'s "lawful authority of the employer" factor obviously do not exist in a case such as this where the issue concerns whether merit pay should be removed from a collective bargaining agreement, especially when merit pay provisions have been in the employees' collective bargaining agreements for over two decades.

Second, it would presumptuous of me as an arbitrator to rule on the legality of those long-existing collectively bargained merit pay provisions under the Quota Act or *City of Sparta* when the Union has taken no real action to obtain a court ruling that the merit pay provisions of the Agreement are illegal. At the hearing, the

following exchange occurred as counsel for the Village asked questions of counsel for the Union (Tr. 130 [emphasis added]):

> Q. Has the union ever filed a grievance or *initiated any other type of litigation* against the village related to the Quota Act?
>
> A. Other than the grievances that are in the record I don't know of any.
>
> Q. Those grievance were all filed within the last few weeks, right?
>
> A. Yes.
>
> Q. Are you aware of any other grievances the union has ever filed on this subject?
>
> A. No.

In the Vaccine Mandate awards, I had voluminous legal precedent dating back to 1905 that supported a position that the State of Illinois had the legal authority to mandate vaccinations. Here, given that *City of Sparta* was decided in 2020, I have nothing like that.

The courts should have the first opportunity to determine whether the merit pay provisions of the Agreement are prohibited under the Quota Act as should the Illinois Labor Relations Board ("ILRB") and the courts on review in determining whether seeking to maintain the merit pay provision involves an illegal, permissive or mandatory subject of bargaining. Again, these provisions have existed for over two decades in the various collective bargaining agreements covering these employees. With so little legal support, I find there is no reason to remove that long-standing condition from the Agreement. Given that Section 14(h) provides that "... the arbitration panel shall base its findings, opinions and order upon the following factors, *as applicable*", I have a degree of discretion here. As I have with use of external

comparables under Section 14(h)(4)(A) of the IPLRA for setting terms of collective bargaining agreements finding that external comparables are not "applicable", under the circumstances of this case with the relatively new external law found in *City of Sparta*, I do not find that case or the Quota Act make the merit pay provisions of this Agreement "illegal" or "unlawful" as argued by the Union.[83]

(2). Merit Pay Is "Antiquated"

The Union argues that "[m]erit pay is an antiquated system" and should be eliminated.[84] Perhaps that is a "good idea". However, a "good idea" is not enough to meet the Union's burden. *Highland Park (Sergeants Unit), supra* at 5 and discussion *supra* at III.

(3). Conclusion On Merit Pay (Exclusive Of Arbitration Of Disputes)

The Union has not shown that the merit pay system with its evaluations process resulting in pay increases that have existed in the collective bargaining agreements for over two decades is now somehow broken. Indeed, if anything, with the addition of arbitration of certain evaluations discussed *infra* at IV(4)(b), the system can work better than the Union argues.

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[83] In the following cases (and other cases cited in those awards) I exercised my discretion under Section 14(h)'s language that the factors listed are to be used by arbitrators in interest arbitrations "as applicable" to find that external comparability is not an "applicable" factor that should be used for setting terms of collective bargaining agreements.

Cook County Sheriff/County of Cook, supra at 38-52
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/l-ma-13-005arbaward.pdf

Village of Swansea and FOP, S-MA-16-213 (2018) at 18-24
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-16-213arbaward.pdf

Village of Flossmoor and FOP, supra at 4-14
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-17-193arbaward.pdf

City of Streator, supra at 4-17
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-17-142arbaward.pdf

[84] Union Brief at 43-44.

With the exception of arbitration provisions now discussed, the Village's position of maintaining the *status quo* with respect to merit pay is therefore adopted.

(b). Queston 2: Can Disputes Over "Exemplary" Ratings Be Arbitrated?

Section 11.2 of the Agreement quoted *supra* at IV(4)(a), provides for three levels of evaluation leading to different step increases along the 35-step salary schedule – "competent", "exemplary" and "superior". Sections 11.4 and 11.5 of the Agreement provide [emphasis added]:

> **Section 11.4. Reevaluation.** An employee who receives an overall merit evaluation of less than "competent" may request reevaluation sixty (60) days after receipt of the annual evaluation. If upon reevaluation, the employee receives a performance rating of "competent", the employee shall receive the merit increase effective as of the date of the written reevaluation**.**
>
> **Section 11.5. Merit Grievance.** Any overall merit evaluation may be grieved *to Step 3* of the grievance procedure (Village Administrator), *but not beyond Step 3, except that an overall merit evaluation of "competent" or less may be grieved to final and binding grievance arbitration,* provided the employee has made a timely request for reevaluation and such reevaluation did not result in an upgrade.

Under Section 11.5, an employee who receives an "exemplary" evaluation can only protest that rating to Village Administrator at Step 3 of the grievance procedure and the Union cannot seek arbitration over that employee's not being rated at the resulting higher-step placement and corresponding wage increase had the employee received a "superior" rating.

The Union seeks the ability to arbitrate those kinds of disputes arguing that Section 8 of the IPLRA requires that it be allowed to do so.[85]

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[85] Union Brief at 39-40.

According to the Village, Section 11.5 in its present form does not violate Section 8 of the IPLRA and the Union's request for the ability to arbitrate these disputes was not raised until the hearing and I should not rule on that request in this award.[86]

(1). Can I Decide This Dispute?

The Union addressed the arbitration issue at the hearing with the Village objecting and arguing that "[t]his is the first time that the union has raised this argument that there is a violation of Section 8 ... [and i]f the union is going to advance a Section 8 argument I think we are getting sandbagged here."[87]

I can consider the Union's argument – and no one was sandbagged.

First, throughout, the Union has sought to strike the merit pay provisions of the agreement. In its final offer, the Union specifically stated:[88]

> **Issue 2 – Merit Pay (economic)**
>
> Remove merit pay system (and corresponding language), keep existing scale, but based on seniority.

By seeking to "[r]emove merit pay system (and corresponding language)", the Union clearly sought to remove the prohibition against arbitrating certain evaluations that are part of the merit system.

Second, again going to the Union's final offer, after proposing a straight years of service pay schedule, the Union specifically quoted the entirety of Sections 11.2, 11.4, 11.5, 11.6 and 11.7 of the 2018-2021 Agreement and indicated in its proposed language that those sections be removed through designated strike throughs.[89]

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[86] Village Brief at 53-55.

[87] Tr. 16-21.

[88] Union Final Offers at 2.

[89] *Id*. at 3-4.

Relevant to this discussion, the language in Section 11.5 of "... an overall merit evaluation of 'competent' or less may be grieved to final and binding grievance arbitration ..." (thereby precluding arbitration of disputes over evaluations where employees receive an "exemplary" rating rather the resulting higher paid "superior" rating) was specifically stricken through in the Union's final offer.[90] The Village was therefore on clear notice through the process established for this hearing that the Union was seeking to remove language from the Agreement precluding arbitration of disputes over evaluations where employees receive an "exemplary" rating rather than the resulting higher paid "superior" rating.

Third, when the question came up over whether the Union was raising this issue for the first time and the Village asserting that it was being sandbagged, I viewed the dispute as argument and specifically advised the Village:[91]

> ARBITRATOR BENN: ... So this is argument. And if you feel that you are caught being unaware, please tell me what you need. It's that simple. Nobody is getting sandbagged here.
>
> MR. DENHAM: If the union is going to advance a Section 8 argument I think we are getting sandbagged here.
>
> ARBITRATOR BENN: What I'm telling you is I'm going to prevent anyone's perception that they got sandbagged. So you are going to have the ability to respond to it. So whether you can do it today, whether we finish today, or if we do finish today that you might say, well, I have to talk with my folks and see what our position is on this and we may need to respond to this either in a brief or in further hearing. It's very informal. Look, it's a statutory process, but it's really a problem solving process. The problem is the parties have not agreed to a contract. So why don't we move on. If you need more time, you tell me and you got it.

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[90] *Id*. at 4.

[91] Tr. 20-21.

The hearing was completed that day with no need for further hearing or argument requested and the parties subsequently filed briefs fulling addressing the arbitration of evaluations dispute.

Based on the above, the Village was on notice of the Union's position and given the opportunity to respond (which it took advantage of) and the parties fully addressed the issue. The dispute is properly before me and can be decided.

(2). The Merits Of The Union's Position

As discussed *supra* at IV(4)(a), I have rejected the Union's position that merit pay should be removed from the Agreement. However, the concept of merit pay as it remains – *i.e.*, higher step placements based on evaluations of performance – is separate and distinct from a dispute resolution process to resolve differences over whether a higher performance evaluation should have been given to an employee.

In light of the discussion *supra* at IV(1) that Section 8 of the IPLRA requires final and binding arbitration in collective bargaining agreements "*unless mutually agreed otherwise*", the Union's position that disputes over whether employees who receive an "exemplary" rating rather than the resulting higher-paid "superior" rating in the merit pay system under Section 11.2 can be arbitrated.

(c). Conclusion On Merit Pay

The Village's position that merit pay in Section 11.2 shall remain, however, the Union's position that disputes over whether employees who receive an "exemplary" rating rather the resulting higher-paid "superior" rating in the merit pay system under Section 11.2 can be arbitrated.

5. Body-Worn Cameras

The Union proposes addition of an appendix to the Agreement ("Appendix C") entitled "Agreement Between The Metropolitan Alliance Of Police And Village Of

Bartlett" detailing a policy related to the use of body-worn cameras.[92] The Village proposes *status quo*.[93]

In the mix on this issue are the Union's assertions that during negotiations it brought up the issue of body camera policies because of requirements under the SAFE-T Act; the Union's contention that the Village stated it did not want to bargain over the issue at that time; the Village's issuance of a policy; a demand to bargain by the Union which was made with the Village contending there was no duty to bargain; and the Union's seeking a declaratory ruling from the ILRB which the ILRB's General Counsel issued (S-DR-22-0002, September 16, 2022),[94] that the Union views as supporting its position that the issues must be bargained as the ILRB's General Counsel concluded that "I find the Union's proposed BWC MOA concerns mandatory subjects of bargaining."[95] According to the Union, "[t]he Union's proposal addresses safety, discipline and privacy concerns."[96]

The Village argues that areas raised by the Union's proposed appendix infringe on the Village's management rights and that I should "... recognize the *status quo* and allow the Village to create, amend, and enforce body camera policies through its management rights" and, moreover, "[b]y the Village's count, the Union's proposal would change at least seven different *status quos* related to entrenched management rights and it touches upon numerous permissive and illegal topics."[97]

There are several dynamics at play here.

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[92] Union Final Offers at 2, 10-13; Union Brief at 5, 11, 17, 52-55.

[93] Village Final Offers at 1; Village Brief at 69-85.

[94] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/decisions/boarddecisions/documents/s-dr-22-0002-declaratoryruling.pdf

[95] Declaratory Ruling at 13; Union Brief at 52-53.

[96] Union Brief at 54-55.

[97] Village Brief at 69.

First, this Agreement is going to expire on April 30, 2023 – less than two months from issuance of this award.

Second, with her declaratory ruling, the ILRB's General Counsel has clarified whether components of the Union's proposed appendix are mandatory subjects obligating the Village to bargain.

Third, the Union's demand for interest arbitration was made on November 23, 2021 – prior to the ILRB's General Counsel's ruling.[98]

Fourth, one of the Union's concerns is over discipline resulting from violations of any policy the Village implements concerning body-worn cameras.[99] The discussion, *supra* at (IV)(1) now gives employees the new ability to have disciplinary matters adjudicated by an arbitrator rather than by the Police and Fire Commission.

Fifth, to say the least, the parties are miles apart on how they view memorializing body-worn camera rights and obligations. To say the obvious, the parties have not had the opportunity to bargain without the pressure of being in the midst of an interest arbitration proceeding and any bargaining that did occur was without this hammer over their heads and was also without the benefit of the ruling of the ILRB's General Counsel.

Section 14(f) of the IPLRA provides:

> (f) At any time before the rendering of an award, the chairman of the arbitration panel, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed 2 weeks. If the dispute is remanded for further collective bargaining the time provisions of this Act shall be extended for a time period equal to that of the remand. The chairman of the panel of arbitration shall notify the Board of the remand.

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[98] Village Exhibit 16.

[99] Union Brief at 54-55.

With respect to this body-worn camera dispute and based on the above and pursuant to my authority stated in Section 14(f) of the IPLRA, before I render an award on this issue, I am "... of the opinion that it would be useful or beneficial to ... remand the dispute to the parties for further collective bargaining ...." As provided in Section 14(f), the parties have "2 weeks" from the date of this award to resolve the body-worn camera dispute through bargaining. Should they not do so, the dispute may be brought back to me for final disposition.

My job of giving legal advice ended some 37 years ago. But for what it's worth, I suggest that with the looming expiration of the Agreement on April 30, 2023 and the negotiations for the successor contract to this Agreement which will take place, that the parties agree to extend the statutory two-week period so that they can more calmly address this dispute at the bargaining table along with the other issues that may exist between them thereby giving both parties more leverage with potential trade-offs. If the parties do not believe they can waive the statutory period, I suggest the body-worn camera dispute be withdrawn from this proceeding without prejudice and added to the issues to be negotiated for the successor contract thereby preserving the parties' positions for a future interest arbitration over the successor contract. If my gratuitous advice is not followed, then after the two-week period, this matter can be brought to me and I will resolve it in a supplemental opinion. But I believe that a calmer atmosphere should be made for the parties to resolve this dispute on their own).

The body-worn camera dispute is remanded to the parties for two weeks as provided in Section 14(f) of the IPLRA.

6. Complete Agreement

Section 16.1 of the 2018-2021 Agreement provides:

> **Section 16.1. Complete Agreement.** This Agreement supersedes and cancels all prior practices, policies and agreements, whether written or oral, unless expressly stated to the contrary herein, and constitutes the complete and entire agreement between the parties and concludes collective bargaining for its term. If a past practice is not addressed in the Agreement, it may be changed by the Village as provided in the management rights clause. Each party waives the right to bargain further on any subject during the term of this Agreement.

The Union initially sought to eliminate the last two sentences of Section 16.1 ("If a past practice is not addressed in the Agreement, it may be changed by the Village as provided in the management rights clause. Each party waives the right to bargain further on any subject during the term of this Agreement."). The Village initially sought to maintain the *status quo*.

In her September 16, 2022 Declaratory Ruling, the ILRB's General Counsel found at 8, 10 that the Village's "... proposal to maintain the Bargaining Waiver Provision and Past Practice Provisions ... concerns permissive subjects of bargaining."[100]

In its final offer in this proceeding, the Village made the following offer which the Village asserts "... revises the language that the General Counsel held to be permissive":[101]

> **Section 16.1. Complete Agreement.** This Agreement supersedes and cancels all prior practices, policies and agreements, whether written or oral, unless expressly stated to the contrary herein, and constitutes the complete and entire agreement between the parties and concludes collective bargaining for its term. Notwithstanding any bargaining obligations, i~~I~~f a past practice is not addressed in the Agreement, it may be changed by the Village as provided in the management rights clause. Each party waives the right to bargain further on any subject during the term of this Agreement.

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[100] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/decisions/boarddecisions/documents/s-dr-22-0002-declaratoryruling.pdf

[101] Village Exhibit 3(a); Village Brief at 90-93.

> The parties acknowledge that during the negotiations that resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Accordingly, the Village and the Union, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement.

The Union's final offer remains eliminating the last two sentences from the language in Section 16.1 from the 2018-2021 Agreement ("~~If a past practice is not addressed in the Agreement, it may be changed by the Village as provided in the management rights clause. Each party waives the right to bargain further on any subject during the term of this Agreement.~~").[102] According to the Union, its proposed language "... excludes the language the Labor Board found to be permissive ... [and] the Arbitrator should reach the same conclusion as the ILRB."[103] With respect to the Village's new proposal following the General Counsel's Declaratory Ruling, the Union further argues [footnote omitted]:[104]

> The Village language seeks to re-add the exact same language the ILRB declared to be permissive. With respect to the past practice waiver, the language was ruled permissive because there is a bargaining obligation. The Village adds "Notwithstanding" any bargaining obligations, which means "despite" their bargaining obligations, they can still do what the ILRB just told them they could not. The Union does not agree – this is a waiver, and we do not waive.

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[102] Union Brief at 55-58.

[103] *Id*. at 55-56.

[104] *Id*. at 56-58.

> With respect to the impact and effects waiver, the Village trades one sentence for a whole paragraph that says the same thing. The last sentence states that each party "voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement." That's a waiver, which cannot be imposed in interest arbitration. *Skokie Firefighters, Local 3033 v. ILRB, State Panel*, 2016 IL App (1st) 152478.
>
> This matter should be decided on the law alone, as noted above. ...

Still, at this point, the parties have not agreed on whether the current versions of the language before me which were proposed after the Declaratory Ruling of the ILRB's General Counsel are mandatory or permissive subjects of bargaining. The Village argues that it has cured the original language found to be a permissive subject of bargaining by the ILRB's General Counsel. The Union argues that the Village has not cured anything and the language the Village now proposes is permissive and "cannot be imposed in interest arbitration" further asserting that "the Arbitrator should reach the same conclusion as the ILRB".

Although having ruled once on the issue of whether language in Section 16.1 is a permissive subject of bargaining, the ILRB's General Counsel (much less the Board itself or the courts) has not ruled on whether the language now proposed by the Village is mandatory or permissive. The ILRB's rules, however, are quite clear. Section 1230.90(k) of the ILRB's Rules and Regulations states [emphasis added]:[105]

> **Section 1230.90 Conduct of the Interest Arbitration Hearing**
>
> * * *
>
> k) Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground

[105] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/documents/rulesmarch2023.pdf

> that the issue does not involve a subject over which the parties are required to bargain, *the arbitration panel's award shall not consider that issue*. However, except as provided in subsections (l) and (m) of this Section, the arbitration panel may consider and render an award on any issue that has been declared by the Board, or by the General Counsel pursuant to 80 Ill. Adm. Code 1200.143(b), to be a subject over which the parties are required to bargain.

That provision is clear. After the General Counsel's Declaratory Ruling, an objection remains over the revised language in Section 16.1 as being a permissive subject of bargaining. That being the case, under Section 1230.90(k) of the ILRB's Rules and Regulations, "the arbitration panel's award shall not consider that issue." The ILRB's General Counsel has ruled once that the language initially relied upon by the Village was a permissive subject of bargaining. The Village has revised that language and the Union contends that revision is also a permissive subject of bargaining. Therefore, under the above quoted rule, my "award shall not consider that issue."

The parties are free to take the revised language back to the ILRB's General Counsel (if she will accept further consideration of the dispute) or to proceed otherwise before the ILRB. But because of the language in Section 1230.90(k), *supra*, as an interest arbitrator I cannot rule on this disputed issue concerning the parties' current proposals for Section 16.1. The words "permissive subject" have been uttered in good faith. That being the case, for now, this train stops.

I therefore issue no award on the parties' offers for Section 16.1. Perhaps as suggested with body-warn camera discussion *supra* at IV(5), the parties will take the opportunity offered to them by the upcoming April 30, 2023 expiration of the Agreement to calmly finesse this dispute across the bargaining table for the successor

contract. However, given the posture of where this dispute is at, I cannot rule on this Section 16.1 dispute.[106]

7. Uniform Allowance

The Union proposes an increase in the uniform allowance equal to 1% of an officer's annual salary.[107] The Village proposes to increase the uniform allowance from $650 per year to $900 per year.[108] Both parties are seeking to change the *status quo* therefore placing the burden on each to show its offer is the more reasonable. *See* discussion *supra* at III.

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[106] *Compare* the Vaccine Mandate *Final Award, supra,* where the issue of permissive versus mandatory subjects of bargaining came up with respect to my being able to decide whether the COVID vaccine mandate in the Illinois prisons and Juvenile Justice facilities should be extended beyond employees to include visitors, vendors and other non-employees. *Id*. at 14-33. https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-22-121-final-after-remand.pdf

After the position was taken that I could not hear the dispute because vaccine mandates for visitors, vendors and non-employees was a permissive subject of bargaining, I proceeded with the hearing and decision because neither party invoked the General Counsel's Declaratory Ruling procedures and the objection was raised after the hearing began and thus, by rule, the General Counsel could not make a ruling even if asked because, under Section 1200.143 of the ILRB's Rules and Regulations, petitions to the General Counsel for the determination of whether a subject of bargaining is permissive or mandatory must be filed no later than the first day of the interest arbitration hearing and this objection was not so filed. Given that there was no avenue for resolution of the question and because people were getting sick and dying in such extraordinary numbers, I could not wait for a result from a proceeding that had not been instituted. I followed the Appellate Court's decision in *Skokie Firefighters, Local 3033 v. ILRB, State Panel*, *supra*, 74 N.E.3d at 1031, which found that an interest arbitrator's proceeding on an arguably permissive subject of bargaining over a party's objection was like deciding "... a nonarbitrable issue ...." Applying the legal standard that disputes are deemed arbitrable unless it can be said with positive assurance that they are not and that doubts are to be resolved in favor of arbitrability (*Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-583 (1960); *Jupiter Mechanical Industries, Inc. v. Sprinkler Fitters and Apprentices Local Union No. 281*, 666 N.E.2d 781, 783 (1st Dist. 1996), appeal denied 671 N.E.2d 732 (1996)), I found that, at best, there were doubts, which meant that I had to decide the dispute.

The crucial difference between the Vaccine Mandate *Final Award* and this case is that the General Counsel's Declaratory Ruling process in that case was not invoked but in this case it was. Because the ILRB's General Counsel has become involved and because the mandatory versus permissive issue has not been fully resolved through that process, under Section 1230.90(k) of the ILRB's Rules, I am precluded from ruling on the complete agreement issue.

[107] Union Final Offers at 6; Union Brief at 5, 61.

[108] Village Final Offers at 1; Village Brief at 3, 11-12, 64-67.

Section 12.2 of the 2018-2021 Agreement provides:

> **Section 12.2. Uniform Allowance.** Newly-hired employees shall be supplied uniforms and equipment which the Department determines appropriate. Probationary employees hired between May 1 and November 1 shall be eligible to receive 50% of the annual uniform allowance described herein on May 1 of the following calendar year. Employees who have completed the probationary period shall receive a $650 annual uniform allowance to be expended for approved uniform items approved by the Chief of Police.
>
> The uniform allowance payments shall be made as lump sum payments. There shall be no requirement for receipts. Employees are required to maintain their uniforms in a professional fashion at all times.

The *status quo* from the 2018-2021 Agreement is a flat dollar amount which historically has been how uniform allowances have been paid. The $650 amount in Section 12.2 has not changed since the parties' 2009-2012 Agreement increased the uniform allowance from $600 in the 2006-2009 Agreement.[109]

The Union's offer of a uniform allowance based on 1% of an officer's annual salary is unreasonable.

First, the Union's proposal of payment of 1% of an officer's annual salary is not reasonable because officers at the higher steps will receive more than those at the lower steps when there is no showing that the cost of purchasing and maintaining uniforms by the employees from all providers is based on the number of years the employees have worked or what salary step they are at as opposed to a flat dollar amount based on the cost of the uniform items to an officer making a purchase. That

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[109] Village Brief at 65. *Compare* Village Exhibit 25(d) at Section 12.2 (the 2006-2009 Agreement) providing a $600 uniform allowance with Village Exhibit 25(c) at Section 12.2 (the 2009-2012 Agreement) providing for a $650 uniform allowance – which has remained through the 2018-2021 Agreement at Section 12.2.

type of differential is justifiable when wages are set based on years of service. Longer-service (and thus experience) is rewarded through higher pay. However, that type of difference in treatment of employees cannot be justified when it comes to purchasing items such as uniforms that can have the same costs to all those making the purchases.

An example of that differential is shown as follows (using an officer at Step 35 – and excluding additional payments received for being at the top step – compared to an officer at Step 4) based on the Union's wage offer adopted under the discussion *supra* at IV(2):[110]

Step	**Salary 2021-2022**	**Union's Uniform Allowance Offer (1%)**	**Salary 2022-2023**	**Union's Uniform Allowance Offer (1%)**
Step 35	$105,838	$1,058.38		
Step 4	$77,746	$777.46		
Difference		**$280.92**		
Step 35			$110,071	$1,100.71
Step 4			$80,856	$808.56
Difference				**$292.15**
Difference Over Life Of Agreement				**$573.07**[111]

Under the Union's offer, why should two employees having to purchase or maintain the same uniforms be required to pay that kind of difference for the same items? That's not reasonable.

Second, the Village's offer increases the uniform allowance from $650 to $900 – an increase of 38.5% over the 2018-2021 rate.[112] The CPI increase as of the end of

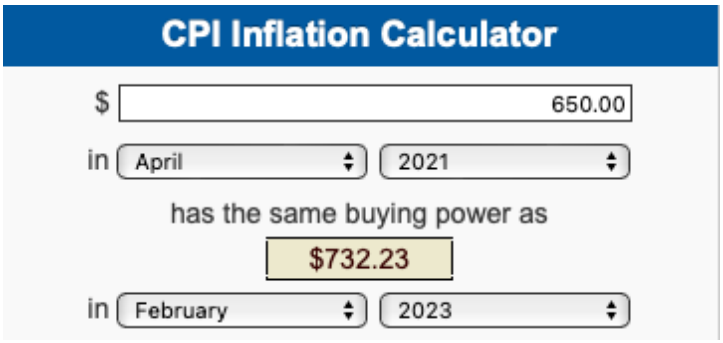
[110] Union's Final Offers at 9.

[111] $280.92 + $292.15 = $573.07.

[112] $900-$650 = $250. $250 / 650 = 0.3846 (38.5%).

this Agreement will be 10.03%. *See* Table 3, *supra* at IV(2)(b). The Village's proposed increase 38.5% for this item far exceeds the 10.03% CPI increase.

And just using the data available through February 2023, the Village's proposed increase for this item from $650 to $900 as reflected in the BLS Inflation Calculator far exceeds inflation on the prior uniform allowance as it would take $732.23 today to purchase $650 previously allocated for uniforms as of the end of the 2018-2021 Agreement on April 30, 2023. Now employees will get $900:[113]



Based on the above, the Village's offer is more reasonable and is adopted.

8. Protective Vests

As with the uniform allowance issue discussed *supra* at IV(7), the Union proposes an increase in the vest allowance equal to 1% of an officer's annual salary and the Village proposes to increase the vest allowance from $650 to $900 per year – an allowance that has not changed since the 1996-1999 Agreement with the Laborers as

[113] https://www.bls.gov/data/inflation_calculator.htm

the employees' bargaining representative increased the protective vest allowance to $650 from $500 in the 1993-1996 Agreement.[114]

For the same reasons discussed concerning uniform allowances, the Village's offer is the more reasonable offer and is adopted.

9. Court Standby Time

Section 6.5 of the 2018-2021 Agreement provides:

> **Section 6.5. Off-Duty Court Time**. When an employee is required to spend off-duty time in court on behalf of the Village, the employee will receive a minimum pay guarantee of two and one half (2.5) hours of overtime pay; except that the 2.5 hour minimum overtime pay is not applicable where the employee performs court duty immediately before, during or immediately after the employee's regular shift.

The Union seeks to add the following to sentence at the end of Section 6.5:[115]

> Off duty court stand-by time shall be paid the same as off duty court time.

The Village seeks to add a standalone provision to Section 6.5:[116]

> **Section 6.5.1. Court Stand-By.** Following execution of this Agreement, an off-duty officer who is required to be on stand-by for DuPage County Court, and who is not subsequently required to report to court shall be compensated $100.00 for each occurrence. Stand-by compensation shall be paid as soon as practicable during a subsequent payroll period.

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[114] Village Brief at 65; Union Final Offers at 6; Union Brief at 5, 59-61; Village Final Offers at 1; Village Brief at 3, 12, 67-69. *Compare* Village Exhibit 25(h) at Section 12.8 (the 1993-1996 Agreement) providing a $500 per vest allowance with Village Exhibit 25(g) at Section 13.4 (the 1996-1999 Agreement) providing for a $650 per vest allowance – which has remained through the 2018-2021 Agreement at Section 12.4.

[115] Union Final Offers at 6; Union Brief at 58-59.

[116] Village Final Offers at 5; Village Brief at 85-88.

Both parties are seeking to change the *status quo* thereby placing the burden on each to show that its offer is the more reasonable. *See* discussion *supra* at III.

The parties focus on the DuPage County court system where, on scheduled dates, officers log into a portal and give their case number and telephone contact information and remain with their phone ready to respond generally between 11 a.m. and 1 p.m. If called, the officers must appear and be prepared to testify.

The problem for the officers arises when they are off duty and on court standby but are not called to testify. Under the existing language in Section 6.5, officers on court standby on off-duty days who are not called are not compensated at all. That diminishes the officers' enjoyment of their off-duty time while on court standby.

Clarity of language issues aside, the question is whether officers on court standby on off-duty days should receive "the same as off duty court time" – *i.e.,* "a minimum pay guarantee of two and one half (2.5) hours of overtime pay" as sought by the Union or "$100.00 for each occurrence" when on court standby at the DuPage County court as offered by the Village.

This is a new benefit for the employees. Quite frankly, from what is before me, I cannot tell whether the Village's offer will solve the problem raised by the Union for off-duty officers on court standby who are not called or if it is merely a minimal step in the right direction. However, as directed *infra* at V, the terms of this award are retroactive to May 1, 2021 and, as discussed throughout, the Agreement will be expiring less than two months from now with the parties having to negotiate a successor Agreement. The parties will therefore be able to determine how the Village's offer of "$100 for each occurrence" has operated for a two-year period and whether it objectively and satisfactorily resolves the problem. The parties are free to raise the issue again in their negotiations for the new Agreement and, if unresolved, process that dispute to a future interest arbitration.

Based on the above, the Village's offer is adopted.

V. RETROACTIVITY AND REMAND FOR DRAFTING LANGUAGE

The terms of this award are retroactive to May 1, 2021. With the exception of the body worn camera issue two-week remand discussed *supra* at IV(5), the remainder of this matter is now remanded to the parties for drafting of language consistent with the terms of the award.

I will retain jurisdiction for disputes concerning drafting of that language and over retroactive application of terms and benefits ordered.

VI. CONCLUSION AND AWARD

In sum, the following rulings have been made:

(1). Arbitration of Discipline

Union's offer adopted (arbitration).

(2). Wages

Union's offer adopted:

Effective May 1, 2021 - 4% increase

Effective May 1, 2022 - 4% increase

(3). Term/Duration

Union's offer adopted (two years - May 1, 2021 to April 30 2023.

(4). Merit Pay

Merit Pay System – Village's offer adopted (*status quo*).

Arbitration of disputes over "exemplary" rather than "superior" ratings – Union's offer adopted (arbitration).

(5). Body-Worn Cameras

Remanded to parties for further negotiations pursuant to Section 14(f) of the IPLRA.

(6). Complete Agreement

Because the parties are still in dispute over whether the Village's proposed language constitutes a permissive subject of bargaining, no award is issued in accord with the requirements of Section 1230.90(k) of the ILRB's Rules and Regulations.

(7). Uniform Allowance

Village's Offer adopted (increase from $650 to $900).

(8). Protective Vests

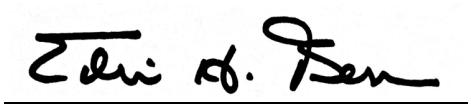
Village's Offer adopted (increase from $650 to $900).

(9). Court Standby Time

Village's offer adopted – $100.00 for each occurrence when off-duty officers not called to report.

(10). Retroactivity and Remand For Drafting Language

Terms are retroactive to May 1, 2021. Language drafting consistent with the award is remanded to the parties. The undersigned will retain jurisdiction for disputes concerning retroactivity and drafting.



Edwin H. Benn
Arbitrator

Dated: March 16, 2023